

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1065

Introduced by Senator Monning

February 16, 2016

An act to amend ~~Section 1286.2~~ *Sections 36 and 1294* of the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

SB 1065, as amended, Monning. ~~Arbitration awards. Dismissal or denial of petitions to compel arbitration: appeals.~~

Existing law, the Elder and Dependent Adult Civil Protection Act, establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse, and sets forth specific provisions governing civil actions arising from the abuse of elderly or dependent adults. Existing law permits a party to a civil action who is over 70 years of age to petition the court for preference under certain circumstances. Under existing law, an aggrieved party may appeal certain orders and judgments, including an order dismissing or denying a petition to compel arbitration.

This bill would provide that if a party has filed a claim pursuant to the Elder and Dependent Adult Civil Protection Act and has been granted a preference, no appeal may be taken by an opposing party from an order dismissing or denying a petition to compel arbitration.

~~Existing law establishes standards for arbitration, and it requires the court to vacate an arbitration award if it makes certain findings.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 36 of the Code of Civil Procedure is*
2 *amended to read:*

3 36. (a) A party to a civil action who is over 70 years of age
4 may petition the court for a preference, which the court shall grant
5 if the court makes both of the following findings:

6 (1) The party has a substantial interest in the action as a whole.

7 (2) The health of the party is such that a preference is necessary
8 to prevent prejudicing the party's interest in the litigation.

9 (b) A civil action to recover damages for wrongful death or
10 personal injury shall be entitled to preference upon the motion of
11 any party to the action who is under 14 years of age unless the
12 court finds that the party does not have a substantial interest in the
13 case as a whole. A civil action subject to subdivision (a) shall be
14 given preference over a case subject to this subdivision.

15 (c) Unless the court otherwise orders:

16 (1) A party may file and serve a motion for preference supported
17 by a declaration of the moving party that all essential parties have
18 been served with process or have appeared.

19 (2) At any time during the pendency of the action, a party who
20 reaches 70 years of age may file and serve a motion for preference.

21 (d) In its discretion, the court may also grant a motion for
22 preference that is accompanied by clear and convincing medical
23 documentation that concludes that one of the parties suffers from
24 an illness or condition raising substantial medical doubt of survival
25 of that party beyond six months, and that satisfies the court that
26 the interests of justice will be served by granting the preference.

27 (e) Notwithstanding any other provision of law, the court may
28 in its discretion grant a motion for preference that is supported by
29 a showing that satisfies the court that the interests of justice will
30 be served by granting this preference.

31 (f) Upon the granting of such a motion for preference, the court
32 shall set the matter for trial not more than 120 days from that date
33 and there shall be no continuance beyond 120 days from the
34 granting of the motion for preference except for physical disability
35 of a party or a party's attorney, or upon a showing of good cause
36 stated in the record. Any continuance shall be for no more than 15
37 days and no more than one continuance for physical disability may
38 be granted to any party.

(g) Upon the granting of a motion for preference pursuant to subdivision (b), a party in an action based upon a health provider's alleged professional negligence, as defined in Section 364, shall receive a trial date not sooner than six months and not later than nine months from the date that the motion is granted.

(h) If a party has filed a claim pursuant to the Elder and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code) and has been granted a preference pursuant to this section, an opposing party shall not appeal from an order dismissing or denying a petition to compel arbitration pursuant to subdivision (a) of Section 1294 arising from that claim.

SEC. 2. Section 1294 of the Code of Civil Procedure is amended to read:

1294. ~~An~~ Except as provided in subdivision (h) of Section 36, an aggrieved party may appeal from:

(a) An order dismissing or denying a petition to compel arbitration.

(b) An order dismissing a petition to confirm, correct or vacate an award.

(c) An order vacating an award unless a rehearing in arbitration is ordered.

(d) A judgment entered pursuant to this title.

(e) A special order after final judgment.

~~SECTION 1. Section 1286.2 of the Code of Civil Procedure is amended to read:~~

~~1286.2. (a) Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:~~

~~(1) The award was procured by fraud, corruption, or other undue means.~~

~~(2) There was corruption in any of the arbitrators.~~

~~(3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.~~

~~(4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.~~

~~(5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to~~

1 ~~hear evidence material to the controversy or by other conduct of~~
2 ~~the arbitrators contrary to the provisions of this title.~~

3 ~~(6) An arbitrator making the award either: (A) failed to disclose~~
4 ~~within the time required for disclosure a ground for disqualification~~
5 ~~of which the arbitrator was then aware; or (B) was subject to~~
6 ~~disqualification upon grounds specified in Section 1281.91 but~~
7 ~~failed upon receipt of timely demand to disqualify himself or~~
8 ~~herself as required by that provision. However, this subdivision~~
9 ~~does not apply to arbitration proceedings conducted under a~~
10 ~~collective bargaining agreement between employers and employees~~
11 ~~or between their respective representatives.~~

12 ~~(b) Petitions to vacate an arbitration award pursuant to Section~~
13 ~~1285 are subject to the provisions of Section 128.7.~~